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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**GERARDO MARQUEZ and
SHELLEY MARQUEZ, h/w**
1332 Swamp Road
Furlong, PA 18925

Plaintiffs,

v.

ANDREW MCMASTERS
543 Fernhill Lane
West Chester, PA 19380

-and-

UNITED STATES OF AMERICA
615 Chestnut St, Suite 1250
Philadelphia, PA. 19106

Defendants.

DOCKET NO.:

13 3847

CIVIL ACTION COMPLAINT

THE PARTIES

1. Plaintiffs, GERARDO MARQUEZ and SHELLEY MARQUEZ, are adult individuals, as well as husband and wife, residing at 1332 Swamp Road, Furlong, PA 18925.

2. Defendant, ANDREW MCMASTERS, is an adult individual residing at 543 Fernhill Lane, West Chester, PA 19380.

3. Defendant, UNITED STATES OF AMERICA, (hereinafter "UNITED STATES"), can be served, pursuant to Federal Rule of Civil Procedure 4, at the United States Attorney for the Eastern District of Pennsylvania located at 615 Chestnut St, Suite 1250, Philadelphia, PA. 19106.

JURISDICTION AND VENUE

4. The claims are brought against Defendant, UNITED STATES, pursuant to the Federal Tort Claims Act 28 U.S.C. § 2671 and § 1346 for money damages as compensation for personal injuries that were caused by the negligent and wrongful acts and omissions of the employees of Defendant, UNITED STATES, while acting within the course and scope of their employment, under circumstances if the Defendant, UNITED STATES, was a private person, they would be liable to the Plaintiffs, under the laws of the Commonwealth of Pennsylvania.

5. Venue over this action is appropriate in this matter pursuant to 28 U.S.C. 1391(e)(1) and (e)(2), in the United States District Court for the Eastern District of Pennsylvania because Defendant, ANDREW MCMASTERS, resides in the Eastern District of Pennsylvania and the Eastern District of Pennsylvania is where a substantial part of the events or omissions giving rise to the claim occurred.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. On or about September 12, 2011, Plaintiff, GERARDO MARQUEZ, did own, manage, drive, operate, possess and control a motor vehicle, a 2002 Dodge Ram, bearing PA License Plate Number YWE 9941.

7. On or about September 12, 2011, Defendant, ANDREW MCMASTERS, did manage, drive, operate, possess and control a United States Postal Service vehicle, a 2004 International Harvester box truck, bearing License Plate Number 4810714, owned by Defendant, UNITED STATES.

8. At all times material to this Complaint, Defendant, UNITED STATES, acted or failed to act by its agents, servants, workmen and/or employees, who were then and there acting within the scope of their authority and course of their employment with Defendant, UNITED STATES, in furtherance of Defendant's business and on behalf of Defendant, UNITED STATES.

9. At all times material to this Complaint, Defendant, ANDREW MCMASTERS, was entrusted, by way of express or implied knowledge, consent and permission, with the operation, possession and control of the aforesaid motor vehicle owned by Defendant, UNITED STATES, and was acting as the agent for Defendant, UNITED STATES, and was acting within the course and scope of his authority.

10. At all times material to this Complaint, Defendant, UNITED STATES, negligently, carelessly and/or recklessly furnished or otherwise permitted Defendant, ANDREW MCMASTERS, to operate the aforementioned motor vehicle when it knew or should have known that such negligent entrustment would result in an injury-producing crash.

11. On or about September 12, 2011, at or near southbound S.R. 309, Fort Washington Expressway, at or near Susquehanna Road and Butler Pike, Upper Dublin Township, Montgomery County, Pennsylvania, Defendants, ANDREW MCMASTERS and UNITED STATES, so negligently, carelessly and/or recklessly operated their motor vehicle so as to cross into and enter Plaintiff's, GERARDO MARQUEZ, lane of travel and violently crash into the Plaintiff's, GERARDO MARQUEZ, vehicle causing Plaintiffs, GERARDO MARQUEZ and SHELLEY MARQUEZ, to sustain the injuries and other losses hereinafter more fully set forth.

12. On September 21, 2011, a claim was presented pursuant to 28 U.S.C. § 2675 to the United States Postal Service Accident & Claims Division 3190 S. 70th Street, Room 201, Philadelphia, Pa. 19153.

13. Pursuant to correspondence, forwarded by Certified Mail, dated March 21, 2013, the United States Postal Service denied the instant claim.

14. The aforesaid accident was due solely to the negligence, carelessness and/or recklessness of the Defendants, ANDREW MCMASTERS and UNITED STATES, acting as aforesaid, and was due in no manner whatsoever to any act or failure to act on the part of the Plaintiff, GERARDO MARQUEZ.

COUNT I - NEGLIGENCE
GERARDO MARQUEZ v. ANDREW MCMASTERS and UNITED STATES

15. Plaintiff, GERARDO MARQUEZ, hereby incorporates by reference paragraphs 1 through 14, as though same were fully set forth at length herein.

16. The negligence, carelessness and/or recklessness of the Defendants, ANDREW MCMASETERS and UNITED STATES, acting as aforesaid, consisted of the following:

- a. Operating a motor vehicle at a high and dangerous rate of speed under the circumstances;
- b. Failing to have said motor vehicle under proper control at that time;
- c. Failure to use the highest degree of skill in the operation of a motor vehicle;
- d. Failing to keep a proper distance from other motor vehicles;
- e. Failing to keep a proper lookout for others lawfully using said road;
- f. Continuing to operate said vehicle in a direction toward the Plaintiff, when they saw or, in the exercise of reasonable diligence should have seen, that further operation in that direction would result in a collision;
- g. Failing to stop their motor vehicle upon the shortest possible notice;
- h. Negligent entrustment of a motor vehicle; and
- i. Operating a motor vehicle in violation of the laws and ordinances, statutes and codes of the United States, of the County of Montgomery and/or the Commonwealth of Pennsylvania.

17. As a result of this accident, Plaintiff, GERARDO MARQUEZ, has suffered injuries which are or may be serious and permanent in nature, including but not limited to the following: right shoulder internal derangement; full thickness tear of the distal supraspinatus tendon and interstitial tear of the distal infraspinatus tendon of the right rotator cuff; disc herniations at L4-5 and L5-S1; L5 radiculopathy; aggravation of lumbar disc disease and lumbar radiculopathy; chondromalacia of the left patella; cervical, right shoulder, low back and left knee sprains and strains, as well as, other injuries as may be diagnosed by Plaintiff's health care providers, all of which injuries have in the past and may in the future, cause Plaintiff great pain and suffering.

18. As a further result of this accident, Plaintiff, GERARDO MARQUEZ, has been or will be required to receive and undergo medical attention and care and to expend various sums of money and to incur various expenses and may be required to continue to expend such sums or incur such expenditures for an indefinite time in the future.

19. As a further result of this accident, Plaintiff, GERARDO MARQUEZ, has suffered medically determinable physical and/or mental impairment which prevents Plaintiff from performing all or substantially all of the material acts and duties which constituted Plaintiff's usual and customary activities prior to the accident.

20. As a further result of this accident, Plaintiff, GERARDO MARQUEZ, has or may suffer a severe loss of earnings and impairment of earning power and capacity.

21. As a direct and reasonable result of the accident aforementioned, Plaintiff, GERARDO MARQUEZ, has or may hereafter incur other financial expenses which do or may exceed amounts which Plaintiff may otherwise be entitled to recover.

22. As a further result of the accident aforementioned, Plaintiff, GERARDO MARQUEZ, has suffered severe physical pain, mental anguish and humiliation, and may continue to suffer same for an indefinite time in the future.

WHEREFORE, Plaintiff, GERARDO MARQUEZ, demands judgment against Defendants, ANDREW MCMASTERS and UNITED STATES, plus interest and costs.

COUNT II - SPOUSAL LOSS OF CONSORTIUM
SHELLEY MARQUEZ v. ANDREW MCMASTERS and UNITED STATES

23. Plaintiff, SHELLEY MARQUEZ, hereby incorporates by reference paragraphs 1 through 22, as though same were fully set forth at length herein.

24. Solely as a result of the aforesaid negligence, carelessness and/or recklessness of Defendants, ANDREW MCMASTERS and UNITED STATES, Plaintiff, SHELLEY MARQUEZ, as spouse of Plaintiff, GERARDO MARQUEZ, has been deprived of the society, companionship, aid, assistance, earnings and consortium of said spouse, all of which have, and may in the future continue to cause great emotional and financial loss and damage.

WHEREFORE, Plaintiff, SHELLEY MARQUEZ, demands judgment against Defendants, ANDREW MCMASTERS and UNITES STATES, plus interest and costs.

COUNT III - PROPERTY DAMAGE
GERARDO MARQUEZ v. ANDREW MCMASTERS and UNITED STATES

25. Plaintiff, GERARDO MARQUEZ, hereby incorporates by reference paragraphs 1 through 24, as though same were fully set forth at length herein.

26. At all times material to this Complaint, Plaintiff, GERARDO MARQUEZ, was the owner of the automobile involved in the accident aforementioned.

27. As a direct and proximate result of Defendants', ANDREW MCMASTERS and UNITED STATES, conduct, Plaintiff, GERARDO MARQUEZ, sustained property damage to the automobile.

WHEREFORE, Plaintiff, GERARDO MARQUEZ, demands judgment against Defendants, ANDREW MCMASTERS and UNITED STATES, plus interest and costs.

ROSEN, MOSS, SNYDER & BLEEFELD, L.L.P.

By:



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